IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8846 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALVANTSINH P BAROT

Versus

DIVISIONAL CONTROLLER

Appearance:

MR MUKESH H RATHOD for the Petitioner.

MR YOGESH S LAKHANI for the Respondent.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: /04/2004

CAV JUDGEMENT

In this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the Award dated 4.4.1991 passed by the Labour Court, Court no. 2, Surat in Reference (LCS) No. 131 of 1988.

2. It is contended by the learned counsel for the petitioner that though the order of reinstatement has been passed by the Labour Court, Surat, full back wages have not been awarded. It is further contended that once the Labour Court has come to the conclusion that the petitioner is not liable and responsible for the said accident, it was not necessary for the Labour Court, to go into the question as to whether the punishment is excessive or not. Therefore, the Award passed by the Labour Court whereby back wages have not been awarded, is not in consonance with the provisions of law.

3. The learned counsel for the respondent has pointed out that the petitioner workman was a driver and he drove the S.T. bus so rashly and negligently on 20th April, 1986 that during the broad day light, the petitioner met with the accident and two pedestrians were killed because of the negligent driving on the part of the petitioner. It was also further contended that the S.T. bus was going out of the city of Rajpipla towards Rajpipla Bharuch route. On road, a tree had fallen and a truck was also standing near the fallen tree. While driving the S.T. bus nearby the fallen tree and the standing truck, the petitioner was not careful and two pedestrians were killed by the petitioner on 20th April, 1986.

4. On the basis of the aforesaid misconduct, the charge-sheet was issued and inquiry was conducted. The petitioner driver was found guilty in the departmental inquiry and consequently was dismissed from the service of the respondent. Before the Labour Court, the petitioner workman had given a pursis dated 30th November, 1990 to the effect that he accepted the legality and validity of the departmental inquiry. The Labour Court had thereafter, gone into the question of quantum of punishment and ultimately, had come to the conclusion that the petitioner workman should be reinstated in the category of helper and not as a driver, more so when a certificate was given by the Doctor of Civil Hospital for the petitioner that the petitioner driver had no control on his hands and he is suffering from a disease which causes treamering of the hands of the petitioner. This aspect of the matter has been discussed in para-4 of the Award passed by the Labour Court.

5. I have carefully gone through the facts of the case and the award passed by the Labour Court and I am of the opinion that there is no justification in

taking any deviation from what is awarded by the Labour Court. Looking to the nature of the charge and the extent of involvement of the petitioner, the Labour Court was right in not awarding the back wages.

6. It is not necessary to award back wages whenever reinstatement is awarded. Award of back wages is a matter of discretion of the Court which will be exercised keeping in mind several factors including

(i) nature, type and character of misconduct;
(ii) involvement of the workman in commissioning the said misconduct;
(iii) consequences and effect of misconduct upon-
(a) employer,
(b) industry,
(c) public etc.
(iv) damages caused by the workman.

7. Looking to the facts and circumstances of the case, the Labour Court has rightly passed the award of reinstatement of the petitioner in the category of helper, instead of driver, without back wages. In exercise of the powers under Article 227 of the Constitution, I am of the candid opinion that the award passed by the Labour Court is true, correct, legal and in consonance with the provisions of law. The petition is therefore, devoid of any merit and it deserves to be dismissed. Hence, the petition is dismissed. Rule discharged with no order as to costs.

(D.N.Patel,J)

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